

**Reserved**

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**CIRCUIT SITTING : BILASPUR**

**Original Application No.203/910/2012**

Bilaspur, this Friday, the 11<sup>th</sup> day of January, 2019

**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER**  
**HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**

1. Namdeo Raghav, age 47 years, S/o Shri R.R. Namdeo, 111/1 Banglow Yard, Near Bharat Mata School, Railway Colony Bilaspur (CG) 495004.

2. Mansingh Meena, age 44 years, S/o Late Shri Ram Singh Meena, Q No. E/7/1, Railway Station – Tirora, Tah: Tirora, Distt: Tirora, Distt: Gondia (MS) - 441911      **-Applicants**

**(By Advocate – Shri A.V. Shridhar)**

**V e r s u s**

1. Union of India through the General Manager, South East Central Railway, G.M. Office, Railway Settlement Bilaspur (C.G.) 495004.

2. Chief Personnel Officer, South East Central Railway, G.M. Office Building, 1<sup>st</sup> Floor, Railway Settlement Bilaspur, Chhattisgarh 495004.

3. Principal Chief Engineer, South East Central Railway, G.M. Office Building, 3<sup>rd</sup> Floor Railway Settlement Bilaspur, Chhattisgarh 495004.

4. Chief Signal & Telecommunication Engineer, South East Central Railway, G.M. Office Building, 2<sup>nd</sup> Floor, Railway Settlement Bilaspur, Chhattisgarh – 495004.

5. Rakesh Prasad, AXEN/Design/HQ, 3<sup>rd</sup> Floor, Engineering Section, G.M. Office Building, SEC Railway, Bilaspur (CG) – 495004.

6. Ajay Kumar Gupta, AXEN/Bridge/ Line, Construction Office, Railway Settlement, Bilaspur (CG) – 495004.

7. Vijay Kumar Asati, AXEN (Construction), Office of Dy. CE II Construction Office Railway Settlement/ Raigarh, Chhattisgarh – 496001.

8. Abhay B. Borkar, AXEN/TM/Line, Track Machine Organization, Barah Kholi, Banglow Yard, Railway Settlement, Bilaspur (CG) 495004.

9. R.K. Sahoo, AXEN, Office of ADEN, Shahdol, Railway Settlement, Shahdol (M.P) 484001.

10. Bharat Sharma, ADEN, Office of ADEN, Railway Settlement, Tumsar Road (Dewadi), Tahsil – Tumsar, Distt. – Bhandara, Maharastra, State - 441913 **-Respondents**

**(By Advocate – Shri R.N. Pusty for respondents Nos.1 to 4 and Shri G. Vishwakarma for respondents Nos.5 to 10)**

*(Date of reserving order : 07.01.2019)*

### **ORDER**

**By Ramesh Singh Thakur, JM.**

The applicants are aggrieved by their non-selection for formation of panel of ADEN/AXEN (Group ‘B’) through LDCE against 30% vacancies – Civil Engg. Department of South East Central Railway, Bilaspur.

**2.** They have sought for the following reliefs:

“8. That, the Hon’ble Tribunal may be graciously pleased to call for the whole case file for perusal and-

1. The Hon’ble Tribunal may be graciously pleased to kindly call for the whole case file of issue in dispute for perusal and

2. Direct the respondents to promote the applicants too as AEN (Group “B”) against the existing vacancies with due protection of seniority in true spirit of Railway Board’s letter No;E(GP)2009/2/44 dated 10.10.2011 (Annexure A-4).

3. Any other relief/(s) the Hon’ble Tribunal may just and equitable in facts and circumstances of the instant case also be awarded.”

3. The case of the applicants is that as per Annexure A-1, the respondents issued notification No.20/2009 for selection for formation of a panel of ADEN/AXEN (Group-‘B’) through LDCE against 30% vacancies – Civil Engg. Department of SECR/BSP. The applicants being eligible to participate in the selection process, appeared in the written test conducted on 19.06.2010. On 18.02.2011, the result of the written test was declared in which the applicants secured 2<sup>nd</sup> and 3<sup>rd</sup> position respectively. Vide Annexure A-2 dated 18.02.2011, the provisional eligibility list for appearing in viva-voce was issued, wherein the name of applicants Nos.1 and 2 appear against Roll Nos.150 and 11 respectively. The applicant No.1 is shown against the Unreserved category and the community of applicant No.2 is shown as ST. Subsequently, as per Annexure A-3 letter dated 06.06.2011, the viva voce test for selection to the aforesaid post was scheduled for 08.06.2011 and 09.06.2011

in the chamber of PCE/SECR/BSP. On 24.05.2011 (Annexure A-3 colly.), a list of provisionally qualified candidates in the written examination for appearing in the viva-voce test was issued, wherein the applicant No.1 has been shown at Sr. No.17 and applicant No.2 is at Sr. No.03 of the said list.

4. Ultimately, the respondent department has approved the panel finally for publication vide Office Memorandum dated 04.11.2011 (Annexure A-10), wherein the name of applicants does not find place and the panel is approved by selecting the private respondents Nos.5 to 10.

5. The main ground for challenging the action of the respondents is that the earlier General Manager had declined to approve the impugned select list for its publication as Final Panel for promotions of staff to Group 'B' posts of Engineering Department, however, the same was ignored while issuing the final panel, which is in violation of the instructions issued by the Railway Board on 10.10.2011 (Annexure A-4). Further, vide Annexure A-6 and A-7, the disputed select list had been approved by just discussing with the members of DPC, who had rejected the candidature of the applicants earlier. The applicants secured more marks in the written examination. However, while

preparing the final select list, the respondents have ignored this fact despite the instructions issued by the Railway Board on 10.10.2011.

**6.** The official respondents Nos.1 to 4 have filed their reply. The respondents have admitted the fact regarding issuance of notification for the formation of panel through LDCE for the six posts of ADEN/AXEN (Group B) through LDCE against 30% vacancies – Civil Engineering Department. It has been further submitted that the selection has been conducted by the authority as per the guidelines framed by the Railway Board. Clause 10 of the Master Circular No.68 (Annexure R-1) provides for procedure of selection, which is based on a written test, viva-voce and assessment of records by the Selection Committee. In order to qualify, a candidate must secure the minimum prescribed qualifying marks in each of the papers of written examination, in the viva-voce and record of service. Further, Clause 15.2.1 of the Master Circular pertains to the LDCE. The respondents have averred that the selection has been conducted strictly in accordance with the provisions of the Master Circular. Though the petitioners had scored more marks than four empanelled candidates, however, they failed to secure

mandatory qualifying marks of 30 required under Para 10.2(B) of Master Circular No.68.

7. It has been further submitted by the respondents that viva-voce for selection to the above Group B post was held on 08.06.2011 and 09.06.2011 by the nominated DPC and DPC had made recommendations for empanelment of the six candidates, who had qualified in each of the papers of written examination, in viva-voce, which includes record of service separately and also in aggregate. The said recommendations of the DPC were put to General Manager, East Coast Railway on 10.06.2011 for approval, who was looking after the duties of GM/SECR. Subsequently, the General Manager, East Coast Railway has also relinquished the charge of GM, SECR on 16.08.2011 and GM, West Central Railway was looking after the duties of the post of GM, SECR on 16.08.2011. In the meantime, GM, North Central Railway was ordered to look after the duties of General Manager, SECR and the proceedings file was resubmitted on 04.11.2011 for a decision on proceedings, who has finally approved the panel on 04.11.2011 and the same was published on 04.11.2011. In regard to applicant's submission regarding issuance of letter dated

10.10.2011 (Annexure A-4) by the Railway Board, the respondents have submitted that the same was not in existence when the DPC held its proceedings on 08.06.2011 and 09.06.2011.

**8.** The private respondents Nos.5 to 10 have also filed their reply and have supported the reply filed by the official respondents.

**9.** The applicants have filed their rejoinder to the reply filed by the respondents and have reiterated their earlier stand made in the O.A. It has been submitted that the DPC again had met, which could not be and the same becomes *functus officio* due to the fact that there cannot be review of the recommendations once the DPC has recommended and, therefore, the approval by the General Manager on 04.11.2011 should not have been there.

**10.** The respondents have placed on record the noting sheet as Annexure R-2 and proceedings of the selection committee vide MA No.203/650/2014.

**11.** We have heard the learned counsel for the parties and also gone through the documents and pleadings available on record.

**12.** From the pleadings itself, it is clear that the respondent department, vide Annexure A-1, had issued the notification for formation of a panel of ADEN/AXEN (Group-B) through LDCE against 30% vacancies of Civil Engineering Department. It is also not in dispute by the parties that the applicants as well as private respondents had appeared in the written examination and qualified the same as per Annexure A-2. Thereafter, they were put in the list of provisionally qualified in the written examination conducted on 19.6.2010. The name of the applicants appeared at Sr. Nos.17 and 3 respectively in the above list. The main allegation of the applicants is that despite getting high marks in the written examination, they have not been empanelled for the aforesaid post. They have raised the suspicion regarding the unfair and unreasonable procedure and method while approving the panel by the General Manager. It has been alleged that as per Annexure A-6, the proceeding of the committee were put up before the GM for approval, but the same were returned without approval or any other comments by the GM. In the proceeding dated 12.07.2011, it was noted as under:

“It was informally gathered that the General Manager had reservations about two candidates (at Sl. No.2 and 16 of the mark statement) who secured higher mark in the written



examination but could not secure the minimum 30 marks in the record of service + viv voce put together and the marks given to them in the viva voce appear to be low as compared to their written examination marks.”

**13.** Further, vide proceedings dated 02.07.2011, the committee met again to judge the technical and general abilities and capacity to make decision and it was found that marks awarded in the viva voce were on consensus. Further submission of the applicant is that up to 04.11.2011 since no decision in regard to approval of the panel was taken by the General Manager and in the management, the GM, NCR is ordered to look after duty of GM, SECR and the file is submitted for decision on proceedings and the said GM has approved the recommendation on 04.11.2011, the said recommendations should have been there due to the comments made by the other GM on 12.07.2011 and once the committee has made the recommendation, then the committee is *functus officio* and the meeting of the committee on 12.07.2011 has no value.

**14.** The respondents have clearly spelt out in their reply, specifically in Para 7 regarding the notes-sheet, which have been annexed vide MA No.203/650/2014 as Annexure R-2. The respondents have also placed on record the proceedings of the

selection committee on record. From the reply in Para 7, the respondents have clarified each and every situation. As per Annexure R-2, i.e. the note-sheet, the decision regarding the approval of the recommendation of the DPC has been taken on 04.11.2011 and the General Manager has noted as under:

“I have discussed this issue on 3/11, with all three officers concerned i.e. PCE CPO and CSTE. And also with SDGM. PCE had, on the basis of certain Newspaper reports had already entrusted the case to vigilance, even before a complaint from Union was given to vigilance on 27<sup>th</sup> July. There has been no complaint from any of the candidates, besides above. (Discussed with SDGM also on date).

After due investigation, vigilance had also cleared the file and CVC had closed the case on 21<sup>st</sup> April.

After, that there should be no reason to delay the publication of the results. As a matter of fact, this delay is avoidable loss of seniority & promotion to selected candidates.

Since, all officers concerned with whom I discussed the case, were unanimous in their opinion about a proper evaluation having been done in this selection, I am of the opinion, that panel should be published without any delay.”

So, the General Manager has specifically said that there should be no reason to delay the publication of result as a matter of fact this delay is avoidable loss of seniority & promotion to selected candidates. It is also clear from the pleadings itself that there was a lot of exercise between the recommendation of DPC and approval given by the General Manager. So, the reasons given by the GM on 04.11.2011 is relevant and plausible as per the

situation and the Railways have taken further action for promotion.

**15.** Regarding the issue raised by the applicant that despite scoring very high marks in the written examination, the respondent department should have taken into consideration the Annexure A-4 whereby while doing the selection, the DPC should be vigilant. The respondents have specifically submitted in their reply that Annexure A-4 has been issued on 10.10.2011, whereas the DPC has recommended the six persons on 08.06.2011 and 09.06.2011. So, there was no occasion for the respondent department to adhere the Annexure A-4, which was issued on 10.10.2011. The further allegation of the applicants that they have not been empanelled due to extraneous consideration in the viva voce, it has been specifically replied by the respondents that as per Para 10.2(B) of Master Circular No.68, maximum marks are prescribed as 25 for viva-voce and 25 for record of service and qualifying marks are prescribed as 30 (at least 15 marks in the record of service). Since, both the applicants have not obtained qualifying marks, i.e. 30 marks in viva-voce and record of service therefore, they were not empanelled despite scoring of highest marks in the written

examination. Since, this is a LDCE selection, hence, in terms of Para 13.2.1 of the Master Circular No.68, the candidates are required to secure the minimum prescribed qualifying marks in each of the papers.

**16.** In view of the above, we are of the considered view that there is no reason to interfere with the selection and promotion done by the respondent department.

**17.** Resultantly, the O.A is dismissed. No costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

**(Navin Tandon)**  
**Administrative Member**

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